

## Memorandum of Confidentiality between Buyer and Seller

**This memorandum of confidentiality is entered into between:** *(Company name and registration no. if not an individual)*

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**Herein duly represented by** *(Name of individual)*

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**Hereinafter the “Seller”**

**AND** *(Company name and registration no. if not an individual)*

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**Herein duly represented by** *(Name of individual)*

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**Hereinafter the “Buyer”**

### 1. Interpretation and definitions

1.1. In this Undertaking, unless inconsistent with, or otherwise indicated by the context:

1.1.1. the Seller’s address is

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1.1.2. the Buyer’s address is

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1.2. “Confidential Information” shall include any and all conceptual, technical or financial information, related data, contracts, practices, commercial pricing, procedures, information technology and other business information relating to the Buyer’s business generally as well as methods, strategies, plans, documents, and technical specifications, that may be disclosed between the parties whether in written, oral, electronic, or other form.

1.3. “Commencement Date” means the last date of signature of this Undertaking by the Seller;

1.3.1. words in the singular include the plural and vice versa;

1.3.2. words importing any one gender include each of the

other two genders; and

1.3.3. a reference to a natural person includes a legal persona.

1.3.4. The headings of clauses are intended for convenience only and shall not affect the interpretation of this Undertaking.

### 2. Preamble

2.1. The Buyer has in its possession certain Confidential Information relating to its business.

2.2. The Buyer has agreed to disclose certain of this Confidential Information to the Seller for the purpose of providing services and/or products to the Buyer in the capacity of vendor, subject to the Seller agreeing to the terms of confidentiality set out herein.

### 3. Title to the Confidential Information

3.1. The Seller acknowledges that all right, title and interest in and to the Confidential Information vests in the Buyer and that it has no claim of any nature in and to the Confidential Information.

### 4. Period of confidentiality

4.1. The provisions of this Undertaking shall remain in force indefinitely.

### 5. Non-disclosure

5.1. The Seller undertakes to maintain the confidentiality of any Confidential Information to which the Seller should be allowed access by the Buyer, whether before or after the Commencement Date of this Undertaking. The Seller will not divulge or permit to be divulged to any person any aspect of such Confidential Information otherwise than may be allowed in terms of this Undertaking.

5.2. The Seller shall take all such steps as may be reasonably necessary to prevent the Confidential Information falling into the hands of any unauthorised third party.

5.3. The Seller shall not make use of any of the Confidential Information in the development, manufacture, marketing and/or sale of any goods without the prior written consent of the Buyer.

5.4. The Seller shall not use or disclose or attempt to use or disclose the Confidential Information for any purpose other than performing its contractual obligations to the Buyer.

5.5. The Seller shall not use or attempt to use the Confidential Information in any manner which will cause or be likely to cause injury or loss to the Buyer.

5.6. The Buyer may by written notice to the Seller specify which of the Seller’s employees, officers or agents are required to sign a secrecy undertaking in a form specified by the Buyer from time to time and no such person may be employed in the conduct of the business of the Seller until such secrecy undertaking has been signed.

5.7. All documentation furnished to the Seller by the Buyer pursuant to this Undertaking will remain the property of the Buyer and upon the request of the Buyer will be returned to the Buyer. The Seller will not make copies of any such documentation without the prior written consent of the

Buyer.

5.8. Any material of a confidential nature which comes into the possession of the Seller or one of its agents or employees, or which is generated by the Seller, or one of its agents or employees, after the Commencement Date:

5.8.1. shall be deemed to form part of the Confidential Information of the Buyer;

5.8.2. shall be deemed to be the property of the Buyer;

5.8.3. shall not be copied, reproduced, published or circulated by the Seller; and

5.8.4. shall be surrendered to the Buyer on demand;

5.9. unless the Buyer provides its prior written consent to the contrary.

**6. Exceptions**

6.1. The above undertakings by the Seller relating to the confidentiality shall not apply to information which:

6.1.1. is in fact lawfully in the public domain at the Commencement Date; or

6.1.2. lawfully comes into the public domain after the Commencement Date otherwise than as a result of the conduct of the Seller or one of its employees or agents; or

6.1.3. the Seller is compelled to disclose in terms of a court order.

6.2. The onus of proving the facts necessary to sustain any one of the exceptions listed in sub-paragraphs 6.1.1 to 6.1.3 rests with the Seller.

**7. Jurisdiction**

7.1. This Undertaking shall be governed by South African law and the Seller hereby irrevocably agrees to the jurisdiction of the High Courts of South Africa in respect of any dispute flowing from this Undertaking.

**8. Whole agreement**

8.1. This document constitutes the whole of this Undertaking to the exclusion of all else.

8.2. No amendment, alteration, addition, variation or consensual cancellation of this Undertaking will be valid unless in writing and signed by the Seller and the Buyer.

**9. Waiver**

9.1. No waiver of any of the terms or conditions of this Undertaking will be binding for any purpose unless expressed in writing and signed by the Buyer and any such waiver will be effective only in the specific instance and for the purpose given.

9.2. No failure or delay on the part of the Buyer in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise by the Buyer of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**10. Severability**

10.1. In the event that any of the provisions of this Undertaking are found to be invalid, unlawful, or unenforceable such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

**Dated at** \_\_\_\_\_

**this** \_\_\_\_\_ **day of** \_\_\_\_\_

**Seller Witnesses:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**(Signatures of witnesses)**

\_\_\_\_\_  
**(Signature of or on behalf of the Seller)**

**The Buyer accepts the above Undertaking:  
Buyer Witnesses:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**(Signatures of witnesses)**

\_\_\_\_\_  
**Signature of or on behalf of the Buyer**

\_\_\_\_\_  
**Date**